

# OFFICE OF THE ATTORNEY GENERAL

86-00025



CHARLES A. GRADDICK  
ATTORNEY GENERAL  
STATE OF ALABAMA

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JAMES R. SOLOMON, JR.  
DEPUTY ATTORNEY GENERAL  
  
WILLIAM M. BEKURS, JR.  
EXECUTIVE ASSISTANT  
  
WALTER S. TURNER  
CHIEF ASSISTANT ATTORNEY GENERAL  
  
JANIE NOBLES  
ADMINISTRATIVE ASSISTANT

ADMINISTRATIVE BUILDING  
64 NORTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (205) 834-5150

Mr. Joseph Zoghby  
Chairman  
Mobile County Racing Commission  
Post Office Box 1886  
Mobile, Alabama 36633

Mobile County Racing Commission  
- Dog Racing - Unclaimed  
Property - Escheats

Neither money remaining in  
pari-mutuel pool as a result of  
winning ticket being not pre-  
sented, nor such a ticket, is  
subject to the Uniform Disposi-  
tion of Unclaimed Property Act,  
§§35-12-20, et seq., Code of  
Alabama 1975.

Dear Commissioner Zoghby:

You have forwarded to this office the resolution of the  
Mobile County Racing Commission in which said Commission  
requests the opinion of this office respecting the following  
question:

Whether or not winning tickets which are  
not presented for payment or money re-  
maining in a wagering pool as a result of  
tickets being not presented are property  
subject to the Uniform Disposition of Un-  
claimed Property Act?

As we understand it, this question arises because, on  
occasion, winning tickets are not presented for payment.  
Such tickets are referred to as outstanding tickets or  
"outs." The Commission's rules provide, in Chapter 44, that  
each association conducting races in the Mobile County area

"...shall carry on its books an account which shows the total amount due on outstanding unredeemed mutuel tickets, which represents the winning tickets not presented for payment,..."  
The rule goes on to say:

"All funds for payment of unpaid tickets, otherwise known as 'outs', will be held by the Association for a period until the closing date of the racing meet of the following year. Immediately after the closing date of the racing meet of the following year, the Association shall distribute these funds by retaining one-half (1/2) for the Association and distributing one-half (1/2) to the Mobile County Racing Commission."

The Commission functions, and is authorized to carry out its duties, under Act No. 2431 of the 1971 Legislature. Section 14 of that Act authorizes the Commission to make rules governing wagering at meets.

Act 2431 was amended by Act 84-398, to include, inter alia, in §15, the following language:

"Amounts due on outstanding unredeemed mutuel tickets, which represents the winning tickets not presented for payment shall be distributed in accordance with rules and regulations promulgated by the Racing Commission."

The above-quoted provisions of Act 84-398 make it clear that the Legislature has ratified the steps taken by the Commission to provide for the proper method of treating funds representing "outs." Furthermore in the acts that establish the Racing Commissions for Greene and Macon Counties, Acts 376 of the 1985 Legislature and Act 83-575 of the 1983 Legislature, respectively, the Legislature expressly provided for disposition of "all monies represented by any unclaimed, uncashed, or abandoned pari-mutuel tickets known as 'outs' money." (Section 14 of Act 376 and Section 13 of Act 83-575)

The Uniform Disposition of Unclaimed Property Act appears as §35-12-20, et seq., Code of Alabama 1975. The only provisions which, even by the remotest stretch of the imagination, can be applied to "outs" money are §35-12-27 and

§35-12-29 which each provide for abandonment of money held for more than seven years after it became payable or distributable. There are two aspects of these statutes which have bearing on the question here under consideration. The first is the fact that the property must be held for seven years before it is presumed to be abandoned. In view of the fact that, in accordance with rules established by the Commission and ratified by the Legislature, the funds in question are to be distributed "immediately after the closing date of the racing meet of the following year,...by retaining one-half for the Association and distributing one-half to the Mobile County Racing Commission," there is no property held for seven years which could become abandoned.

The second aspect of this statute which might have bearing, is the fact that the term for abandonment is to begin upon the property becoming payable or distributable. A pari-mutuel wagering ticket is payable upon demand and presentation, and not before, and accordingly the term for abandonment would not begin to run until the ticket was presented for payment. Under the law, and the rules and regulations of the Commission, a ticket presented for payment prior to the close of the racing meet of the following year will be paid out of the funds retained to cover "outs." Thus, there is obviously nothing to abandon. A ticket presented for payment after the close of the racing meet of the following year will not be paid because the funds have already been distributed, and accordingly there is nothing to abandon.

While there are no cases in point reported in Alabama, there is a case from the State of Oregon which supports the reasoning just set forth. Oregon Racing Commission v. Multnomah Kennel Club, 411 P.2d 63 (S.Ct. Ore. 1966). In this case the Supreme Court of Oregon had presented to it a factual situation much like the one here in question. The regulations of the Oregon Commission included terms very similar to the regulation of the Mobile Racing Commission, and the Oregon statute respecting unclaimed property is very much like the Alabama statute. The court held:

"A pari mutuel ticket is an instrument payable on demand when the demand is accompanied by presentation of the ticket. It is then that the ticket holder's cause of action accrues. [citations omitted] Only then can it be said that the indebtedness is payable or distributable, and

Mr. Joseph Zoghby  
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as, presumably, every ticket presented will be paid, no situation now exists or is conceivable, which will make applicable the unclaimed property act..." 411 P.2d 63 at 68.

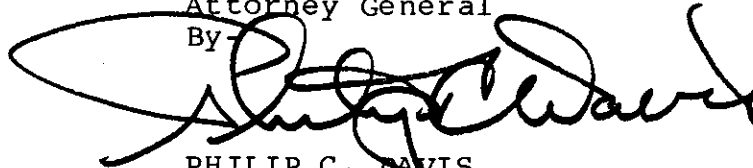
In view of the foregoing it is the opinion of this office that money held to cover outstanding pari-mutuel tickets is not subject to the provisions of Uniform Distribution of Unclaimed Property Act, §§35-12-20, et seq., Code of Alabama 1975, as last amended, nor is such an outstanding ticket subject to said Act.

I trust that the foregoing answers your question. If this office can be of further service to you, please let us know.

Yours very truly,

CHARLES A. GRADDICK  
Attorney General

By

A large, stylized handwritten signature in black ink, likely belonging to Philip C. Davis, is written over the typed name and title.

PHILIP C. DAVIS  
Assistant Attorney General

PCD:bb